

FIRST REGULAR SESSION

# HOUSE BILL NO. 535

## 97TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES BARNES (Sponsor), SMITH (120), GUERNSEY,  
RICHARDSON, JONES (50), ROWDEN, LANT, HINSON, HAEFNER, MCCAHERTY, BLACK AND  
SCHARNHORST (Co-sponsors).

0834H.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 556.061, 558.026, 566.030, 566.032, 566.034, 566.060, 566.062, 566.064, 566.067, 566.068, 566.083, and 566.212, RSMo, and to enact in lieu thereof twelve new sections relating to sexual offenses against a child, with penalty provisions.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 556.061, 558.026, 566.030, 566.032, 566.034, 566.060, 566.062, 2 566.064, 566.067, 566.068, 566.083, and 566.212, RSMo, are repealed and twelve new sections 3 enacted in lieu thereof, to be known as sections 556.061, 558.026, 566.030, 566.032, 566.034, 4 566.060, 566.062, 566.064, 566.067, 566.068, 566.083, and 566.212, to read as follows:

556.061. In this code, unless the context requires a different definition, the following 2 shall apply:

3 (1) "Affirmative defense" has the meaning specified in section 556.056;

4 (2) "Burden of injecting the issue" has the meaning specified in section 556.051;

5 (3) "Commercial film and photographic print processor", any person who develops 6 exposed photographic film into negatives, slides or prints, or who makes prints from negatives 7 or slides, for compensation. The term commercial film and photographic print processor shall 8 include all employees of such persons but shall not include a person who develops film or makes 9 prints for a public agency;

10 (4) "Confinement":

11 (a) A person is in confinement when such person is held in a place of confinement 12 pursuant to arrest or order of a court, and remains in confinement until:

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 13 a. A court orders the person's release; or
- 14 b. The person is released on bail, bond, or recognizance, personal or otherwise; or
- 15 c. A public servant having the legal power and duty to confine the person authorizes his
- 16 release without guard and without condition that he return to confinement;
- 17 (b) A person is not in confinement if:
- 18 a. The person is on probation or parole, temporary or otherwise; or
- 19 b. The person is under sentence to serve a term of confinement which is not continuous,
- 20 or is serving a sentence under a work-release program, and in either such case is not being held
- 21 in a place of confinement or is not being held under guard by a person having the legal power
- 22 and duty to transport the person to or from a place of confinement;
- 23 (5) "Consent": consent or lack of consent may be expressed or implied. Assent does not
- 24 constitute consent if:
- 25 (a) It is given by a person who lacks the mental capacity to authorize the conduct charged
- 26 to constitute the offense and such mental incapacity is manifest or known to the actor; or
- 27 (b) It is given by a person who by reason of youth, mental disease or defect, or
- 28 intoxication, is manifestly unable or known by the actor to be unable to make a reasonable
- 29 judgment as to the nature or harmfulness of the conduct charged to constitute the offense; or
- 30 (c) It is induced by force, duress or deception;
- 31 (6) "Criminal negligence" has the meaning specified in section 562.016;
- 32 (7) "Custody", a person is in custody when the person has been arrested but has not been
- 33 delivered to a place of confinement;
- 34 (8) "Dangerous felony" means the felonies of arson in the first degree, assault in the first
- 35 degree, attempted forcible rape if physical injury results, attempted forcible sodomy if physical
- 36 injury results, forcible rape, forcible sodomy, kidnapping, murder in the second degree, assault
- 37 of a law enforcement officer in the first degree, domestic assault in the first degree, elder abuse
- 38 in the first degree, robbery in the first degree, statutory rape in the first degree [when the victim
- 39 is a child less than twelve years of age at the time of the commission of the act giving rise to the
- 40 offense], statutory sodomy in the first degree [when the victim is a child less than twelve years
- 41 of age at the time of the commission of the act giving rise to the offense], and, abuse of a child
- 42 pursuant to subdivision (2) of subsection 3 of section 568.060, child kidnapping, and parental
- 43 kidnapping committed by detaining or concealing the whereabouts of the child for not less than
- 44 one hundred twenty days under section 565.153;
- 45 (9) "Dangerous instrument" means any instrument, article or substance, which, under the
- 46 circumstances in which it is used, is readily capable of causing death or other serious physical
- 47 injury;

48 (10) "Deadly weapon" means any firearm, loaded or unloaded, or any weapon from  
49 which a shot, readily capable of producing death or serious physical injury, may be discharged,  
50 or a switchblade knife, dagger, billy, blackjack or metal knuckles;

51 (11) "Felony" has the meaning specified in section 556.016;

52 (12) "Forcible compulsion" means either:

53 (a) Physical force that overcomes reasonable resistance; or

54 (b) A threat, express or implied, that places a person in reasonable fear of death, serious  
55 physical injury or kidnapping of such person or another person;

56 (13) "Incapacitated" means that physical or mental condition, temporary or permanent,  
57 in which a person is unconscious, unable to appraise the nature of such person's conduct, or  
58 unable to communicate unwillingness to an act. A person is not incapacitated with respect to an  
59 act committed upon such person if he or she became unconscious, unable to appraise the nature  
60 of such person's conduct or unable to communicate unwillingness to an act, after consenting to  
61 the act;

62 (14) "Infraction" has the meaning specified in section 556.021;

63 (15) "Inhabitable structure" has the meaning specified in section 569.010;

64 (16) "Knowingly" has the meaning specified in section 562.016;

65 (17) "Law enforcement officer" means any public servant having both the power and  
66 duty to make arrests for violations of the laws of this state, and federal law enforcement officers  
67 authorized to carry firearms and to make arrests for violations of the laws of the United States;

68 (18) "Misdemeanor" has the meaning specified in section 556.016;

69 (19) "Offense" means any felony, misdemeanor or infraction;

70 (20) "Physical injury" means physical pain, illness, or any impairment of physical  
71 condition;

72 (21) "Place of confinement" means any building or facility and the grounds thereof  
73 wherein a court is legally authorized to order that a person charged with or convicted of a crime  
74 be held;

75 (22) "Possess" or "possessed" means having actual or constructive possession of an  
76 object with knowledge of its presence. A person has actual possession if such person has the  
77 object on his or her person or within easy reach and convenient control. A person has  
78 constructive possession if such person has the power and the intention at a given time to exercise  
79 dominion or control over the object either directly or through another person or persons.  
80 Possession may also be sole or joint. If one person alone has possession of an object, possession  
81 is sole. If two or more persons share possession of an object, possession is joint;

82 (23) "Public servant" means any person employed in any way by a government of this  
83 state who is compensated by the government by reason of such person's employment, any person

84 appointed to a position with any government of this state, or any person elected to a position with  
85 any government of this state. It includes, but is not limited to, legislators, jurors, members of the  
86 judiciary and law enforcement officers. It does not include witnesses;

87 (24) "Purposely" has the meaning specified in section 562.016;

88 (25) "Recklessly" has the meaning specified in section 562.016;

89 (26) "Ritual" or "ceremony" means an act or series of acts performed by two or more  
90 persons as part of an established or prescribed pattern of activity;

91 (27) "Serious emotional injury", an injury that creates a substantial risk of temporary or  
92 permanent medical or psychological damage, manifested by impairment of a behavioral,  
93 cognitive or physical condition. Serious emotional injury shall be established by testimony of  
94 qualified experts upon the reasonable expectation of probable harm to a reasonable degree of  
95 medical or psychological certainty;

96 (28) "Serious physical injury" means physical injury that creates a substantial risk of  
97 death or that causes serious disfigurement or protracted loss or impairment of the function of any  
98 part of the body;

99 (29) "Sexual conduct" means acts of human masturbation; deviate sexual intercourse;  
100 sexual intercourse; or physical contact with a person's clothed or unclothed genitals, pubic area,  
101 buttocks, or the breast of a female in an act of apparent sexual stimulation or gratification;

102 (30) "Sexual contact" means any touching of the genitals or anus of any person, or the  
103 breast of any female person, or any such touching through the clothing, for the purpose of  
104 arousing or gratifying sexual desire of any person;

105 (31) "Sexual performance", any performance, or part thereof, which includes sexual  
106 conduct by a child who is less than seventeen years of age;

107 (32) "Voluntary act" has the meaning specified in section 562.011.

558.026. 1. Multiple sentences of imprisonment shall run concurrently unless the court  
2 specifies that they shall run consecutively; except that, in the case of multiple sentences of  
3 imprisonment imposed for the felony of rape, forcible rape, sodomy, forcible sodomy, **statutory**  
4 **rape in the first degree** or an attempt to commit any of the aforesaid and for other offenses  
5 committed during or at the same time as that rape, forcible rape, sodomy, forcible sodomy,  
6 **statutory rape in the first degree** or an attempt to commit any of the aforesaid, the sentences  
7 of imprisonment imposed for the other offenses may run concurrently, but the sentence of  
8 imprisonment imposed for the felony of rape, forcible rape, sodomy, forcible sodomy, **statutory**  
9 **rape in the first degree** or an attempt to commit any of the aforesaid shall run consecutively to  
10 the other sentences.

11 2. If a person who is on probation, parole or conditional release is sentenced to a term  
12 of imprisonment for an offense committed after the granting of probation or parole or after the

13 start of his conditional release term, the court shall direct the manner in which the sentence or  
14 sentences imposed by the court shall run with respect to any resulting probation, parole or  
15 conditional release revocation term or terms. If the subsequent sentence to imprisonment is in  
16 another jurisdiction, the court shall specify how any resulting probation, parole or conditional  
17 release revocation term or terms shall run with respect to the foreign sentence of imprisonment.

18 3. A court may cause any sentence it imposes to run concurrently with a sentence an  
19 individual is serving or is to serve in another state or in a federal correctional center. If the  
20 Missouri sentence is served in another state or in a federal correctional center, subsection 4 of  
21 section 558.011 and section 217.690 shall apply as if the individual were serving his sentence  
22 within the department of corrections of the state of Missouri, except that a personal hearing  
23 before the board of probation and parole shall not be required for parole consideration.

566.030. 1. A person commits the crime of forcible rape if such person has sexual  
2 intercourse with another person by the use of forcible compulsion. Forcible compulsion includes  
3 the use of a substance administered without a victim's knowledge or consent which renders the  
4 victim physically or mentally impaired so as to be incapable of making an informed consent to  
5 sexual intercourse.

6 2. Forcible rape or an attempt to commit forcible rape is a felony for which the  
7 authorized term of imprisonment is life imprisonment or a term of years not less than five years,  
8 unless:

9 (1) In the course thereof the actor inflicts serious physical injury or displays a deadly  
10 weapon or dangerous instrument in a threatening manner or subjects the victim to sexual  
11 intercourse or deviate sexual intercourse with more than one person **or the victim is a child and**  
12 **the actor has pled guilty to or has been convicted of the crime of incest against the victim**  
13 **under section 568.020**, in which case the authorized term of imprisonment is life imprisonment  
14 or a term of years not less than fifteen years;

15 (2) The victim is a child less than twelve years of age, in which case the required term  
16 of imprisonment is life imprisonment without eligibility for probation or parole until the  
17 defendant has served not less than thirty years of such sentence or unless the defendant has  
18 reached the age of seventy-five years and has served at least fifteen years of such sentence, unless  
19 such forcible rape is described under subdivision (3) of this subsection; or

20 (3) The victim is a child less than twelve years of age and such forcible rape was  
21 outrageously or wantonly vile, horrible or inhumane, in that it involved torture or depravity of  
22 mind, in which case the required term of imprisonment is life imprisonment without eligibility  
23 for probation, parole or conditional release.

24 3. Subsection 4 of section 558.019 shall not apply to the sentence of a person who has  
25 pleaded guilty to or has been found guilty of forcible rape when the victim is under the age of

26 twelve, and "life imprisonment" shall mean imprisonment for the duration of a person's natural  
27 life for the purposes of this section.

28 4. No person found guilty of or pleading guilty to forcible rape or an attempt to commit  
29 forcible rape shall be granted a suspended imposition of sentence or suspended execution of  
30 sentence.

566.032. 1. A person commits the crime of statutory rape in the first degree if he has  
2 sexual intercourse with another person who is less than fourteen years old.

3 2. Statutory rape in the first degree or an attempt to commit statutory rape in the first  
4 degree is a felony for which the authorized term of imprisonment is life imprisonment or a term  
5 of years not less than five years, unless in the course thereof the actor inflicts serious physical  
6 injury on any person, displays a deadly weapon or dangerous instrument in a threatening manner,  
7 subjects the victim to sexual intercourse or deviate sexual intercourse with more than one person,  
8 **the actor has pled guilty to or has been convicted of the crime of incest against the victim**  
9 **under section 568.020**, or the victim is less than twelve years of age in which case the  
10 authorized term of imprisonment is life imprisonment or a term of years not less than ten years.

566.034. 1. A person commits the crime of statutory rape in the second degree if being  
2 twenty-one years of age or older, he has sexual intercourse with another person who is less than  
3 seventeen years of age.

4 2. Statutory rape in the second degree is a class C felony **unless the actor has pled**  
5 **guilty to or has been convicted of the crime of incest against the victim under section**  
6 **568.020, in which case the crime is a class B felony.**

566.060. 1. A person commits the crime of forcible sodomy if such person has deviate  
2 sexual intercourse with another person by the use of forcible compulsion. Forcible compulsion  
3 includes the use of a substance administered without a victim's knowledge or consent which  
4 renders the victim physically or mentally impaired so as to be incapable of making an informed  
5 consent to sexual intercourse.

6 2. Forcible sodomy or an attempt to commit forcible sodomy is a felony for which the  
7 authorized term of imprisonment is life imprisonment or a term of years not less than five years,  
8 unless:

9 (1) In the course thereof the actor inflicts serious physical injury or displays a deadly  
10 weapon or dangerous instrument in a threatening manner or subjects the victim to sexual  
11 intercourse or deviate sexual intercourse with more than one person **or the victim is a child and**  
12 **the actor has pled guilty to or has been convicted of the crime of incest against the victim**  
13 **under section 568.020**, in which case the authorized term of imprisonment is life imprisonment  
14 or a term of years not less than ten years; or

15 (2) The victim is a child less than twelve years of age, in which case the required term  
16 of imprisonment is life imprisonment without eligibility for probation or parole until the  
17 defendant has served not less than thirty years of such sentence or unless the defendant has  
18 reached the age of seventy-five years and has served at least fifteen years of such sentence, unless  
19 such forcible sodomy is described under subdivision (3) of this subsection; or

20 (3) The victim is a child less than twelve years of age and such forcible sodomy was  
21 outrageously or wantonly vile, horrible or inhumane, in that it involved torture or depravity of  
22 mind, in which case the required term of imprisonment is life imprisonment without eligibility  
23 for probation, parole or conditional release.

24 3. Subsection 4 of section 558.019 shall not apply to the sentence of a person who has  
25 pleaded guilty to or has been found guilty of forcible sodomy when the victim is under the age  
26 of twelve, and "life imprisonment" shall mean imprisonment for the duration of a person's natural  
27 life for the purposes of this section.

28 4. No person found guilty of or pleading guilty to forcible sodomy or an attempt to  
29 commit forcible sodomy shall be granted a suspended imposition of sentence or suspended  
30 execution of sentence.

566.062. 1. A person commits the crime of statutory sodomy in the first degree if he has  
2 deviate sexual intercourse with another person who is less than fourteen years old.

3 2. Statutory sodomy in the first degree or an attempt to commit statutory sodomy in the  
4 first degree is a felony for which the authorized term of imprisonment is life imprisonment or  
5 a term of years not less than five years, unless in the course thereof the actor inflicts serious  
6 physical injury on any person, displays a deadly weapon or dangerous instrument in a threatening  
7 manner, subjects the victim to sexual intercourse or deviate sexual intercourse with more than  
8 one person, **the actor has pled guilty to or has been convicted of the crime of incest against**  
9 **the victim under section 568.020**, or the victim is less than twelve years of age, in which case  
10 the authorized term of imprisonment is life imprisonment or a term of years not less than ten  
11 years.

566.064. 1. A person commits the crime of statutory sodomy in the second degree if  
2 being twenty-one years of age or older, he has deviate sexual intercourse with another person  
3 who is less than seventeen years of age.

4 2. Statutory sodomy in the second degree is a class C felony **unless the actor has pled**  
5 **guilty to or has been convicted of the crime of incest against the victim under section**  
6 **568.020, in which case the crime is a class B felony.**

566.067. 1. A person commits the crime of child molestation in the first degree if he or  
2 she subjects another person who is less than fourteen years of age to sexual contact.

3 2. Child molestation in the first degree is a class B felony unless:

4 (1) The actor has previously been convicted of an offense under this chapter or in the  
5 course thereof the actor inflicts serious physical injury, displays a deadly weapon or deadly  
6 instrument in a threatening manner, or the offense is committed as part of a ritual or ceremony,  
7 in which case the crime is a class A felony; [or]

8 (2) The victim is a child less than twelve years of age and:

9 (a) The actor has previously been convicted of an offense under this chapter; or

10 (b) In the course thereof the actor inflicts serious physical injury, displays a deadly  
11 weapon or deadly instrument in a threatening manner, or if the offense is committed as part of  
12 a ritual or ceremony, in which case, the crime is a class A felony and such person shall serve his  
13 or her term of imprisonment without eligibility for probation or parole[.] ; or

14 **(3) The actor has pled guilty to or has been convicted of the crime of incest against**  
15 **the victim under section 568.020, in which case the crime is a class A felony.**

566.068. 1. A person commits the crime of child molestation in the second degree if he  
2 or she subjects another person who is less than seventeen years of age to sexual contact.

3 2. Child molestation in the second degree is a class A misdemeanor unless the actor has  
4 previously been convicted of an offense under this chapter or in the course thereof the actor  
5 inflicts serious physical injury on any person, displays a deadly weapon or dangerous instrument  
6 in a threatening manner, **the actor has pled guilty to or has been convicted of the crime of**  
7 **incest against the victim under section 568.020**, or the offense is committed as part of a ritual  
8 or ceremony, in which case the crime is a class D felony.

566.083. 1. A person commits the crime of sexual misconduct involving a child if such  
2 person:

3 (1) Knowingly exposes his or her genitals to a child less than fifteen years of age under  
4 circumstances in which he or she knows that his or her conduct is likely to cause affront or alarm  
5 to the child;

6 (2) Knowingly exposes his or her genitals to a child less than fifteen years of age for the  
7 purpose of arousing or gratifying the sexual desire of any person, including the child;

8 (3) Knowingly coerces or induces a child less than fifteen years of age to expose the  
9 child's genitals for the purpose of arousing or gratifying the sexual desire of any person,  
10 including the child; or

11 (4) Knowingly coerces or induces a child who is known by such person to be less than  
12 fifteen years of age to expose the breasts of a female child through the internet or other electronic  
13 means for the purpose of arousing or gratifying the sexual desire of any person, including the  
14 child.

15 2. The provisions of this section shall apply regardless of whether the person violates this  
16 section in person or via the internet or other electronic means.

17           3. It is not an affirmative defense to prosecution for a violation of this section that the  
18 other person was a peace officer masquerading as a minor.

19           4. Sexual misconduct involving a child or attempted sexual misconduct involving a child  
20 is a class D felony unless the actor has previously pleaded guilty to or been found guilty of an  
21 offense pursuant to this chapter, **the actor has pled guilty to or has been convicted of the**  
22 **crime of incest against the victim under section 568.020**, or the actor has previously pleaded  
23 guilty to or has been convicted of an offense against the laws of another state or jurisdiction  
24 which would constitute an offense under this chapter, in which case it is a class C felony.

          566.212. 1. A person commits the crime of sexual trafficking of a child if the individual  
2 knowingly:

3           (1) Recruits, entices, harbors, transports, provides, or obtains by any means, including  
4 but not limited to through the use of force, abduction, coercion, fraud, deception, blackmail, or  
5 causing or threatening to cause financial harm, a person under the age of eighteen to participate  
6 in a commercial sex act, a sexual performance, or the production of explicit sexual material as  
7 defined in section 573.010, or benefits, financially or by receiving anything of value, from  
8 participation in such activities; or

9           (2) Causes a person under the age of eighteen to engage in a commercial sex act, a sexual  
10 performance, or the production of explicit sexual material as defined in section 573.010.

11           2. It shall not be a defense that the defendant believed that the person was eighteen years  
12 of age or older.

13           3. Sexual trafficking of a child is a felony punishable by imprisonment for a term of  
14 years not less than ten years or life and a fine not to exceed two hundred fifty thousand dollars  
15 if the child is under the age of eighteen. If a violation of this section was effected by force,  
16 abduction, or coercion, **or the actor has pled guilty to or has been convicted of the crime of**  
17 **incest against the victim under section 568.020**, the crime of sexual trafficking of a child shall  
18 be a felony for which the authorized term of imprisonment is life imprisonment without  
19 eligibility for probation or parole until the defendant has served not less than twenty-five years  
20 of such sentence.

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